

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION N	O. F	ILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
10/652,679		08/29/2003	Brent D. Massmann	MTC 6828.1 (39-21 (52749)	2560
321	7590	04/14/2006		EXAMINER	
SENNIGER POWERS				CLARDY, S	
ONE METROPOLITAN SQUARE 16TH FLOOR				ART UNIT	PAPER NUMBER
ST LOUIS, MO 63102				1617	

DATE MAILED: 04/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)				
	10/652,679	MASSMANN ET AL.				
Office Action Summary	Examiner	Art Unit				
	S. Mark Clardy	1617				
The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply						
A SHORTENED STATUTORY PERIOD FOR REPLY WHICHEVER IS LONGER, FROM THE MAILING DA - Extensions of time may be available under the provisions of 37 CFR 1.13 after SIX (6) MONTHS from the mailing date of this communication. - If NO period for reply is specified above, the maximum statutory period w - Failure to reply within the set or extended period for reply will, by statute, Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b).	ATE OF THIS COMMUNICATION 36(a). In no event, however, may a reply be tirr vill apply and will expire SIX (6) MONTHS from cause the application to become ABANDONE	N. nely filed the mailing date of this communication. D (35 U.S.C. § 133).				
Status		·				
1) Responsive to communication(s) filed on 21 De	Responsive to communication(s) filed on 21 December 2005.					
,	• "					
	Since this application is in condition for allowance except for formal matters, prosecution as to the merits is					
closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.						
Disposition of Claims						
4) ☐ Claim(s) 1-33 is/are pending in the application. 4a) Of the above claim(s) is/are withdray 5) ☐ Claim(s) is/are allowed. 6) ☐ Claim(s) 1-33 is/are rejected. 7) ☐ Claim(s) is/are objected to. 8) ☐ Claim(s) are subject to restriction and/or	vn from consideration.					
Application Papers						
9) The specification is objected to by the Examine 10) The drawing(s) filed on is/are: a) access Applicant may not request that any objection to the Replacement drawing sheet(s) including the correct 11) The oath or declaration is objected to by the Ex	epted or b) objected to by the liderawing(s) be held in abeyance. See ion is required if the drawing(s) is obj	e 37 CFR 1.85(a). lected to. See 37 CFR 1.121(d).				
Priority under 35 U.S.C. § 119						
 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No. 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. 						
Attachment(s)	4) Interview Summary	(PTO_413)				
 Notice of References Cited (PTO-892) Notice of Draftsperson's Patent Drawing Review (PTO-948) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 	Paper No(s)/Mail Da					

Application/Control Number: 10/652,679

Art Unit: 1617

Claims 1-33 are pending in this application, and are drawn to methods of making Naglyphosate compositions by exothermically batch (claims 1-18) or continuously (claims 19-33) reacting particulate glyphosate acid, NaOH, and water, to make a Na-glyphosate paste with a final Na-glyphosate paste moisture content of about 2% to about 20%.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-33 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-44 of U.S. Patent No. 6,605,568, or claims 1-127 of U.S. Patent No. 6,734,142, further in view of Chin et al (US 5,070,197).

The prior patents each disclose methods of making ammonium glyphosate paste compositions which are equivalent to those claimed herein, with the obvious substitution of sodium hydroxide for the ammonium hydroxide of the prior patents. Chin et al (discussed further below) discloses the equivalence of such a substitution in making glyphosate compositions.

Application/Control Number: 10/652,679

Art Unit: 1617

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-33 are again rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Chin et al and Kramer et al (US 5,614,468).

Chin et al, again, teach a dry reactive process for preparation of a pesticidal salt in a continuous process in which the pesticidal acid is reacted with a base under exothermic (col 3, lines 56-60) reaction conditions with minimal solvent in an extruder (abstract). Glyphosate is listed among the pesticidal agents (col 2, line 46). Both ammonia and NaOH are recited in the list of possible bases, with NaOH among the most preferred bases for making the salt (col 3, lines 26-39). The final residual moisture content is no greater than about 10% (claim 1).

Kramer et al teach a continuous process of reacting ammonium hydroxide with glyphosate acid in an exothermic process to make the ammonium salt of glyphosate with low moisture content (abstract). The moisture content is reduced during the process down to about 2% (col 6, lines 24-29).

One of ordinary skill in the art would be motivated to combine these references in order to use the metal salt reaction processes of Chin in the continuous process of Kramer et al.

Thus, again, it would have been *prima facie* obvious to the ordinary artisan at the time the invention was made to have made Na-glyphosate compositions by exothermic reaction of glyphosate acid, NaOH, and water, to make a Na-glyphosate paste with a low moisture content because the prior art teaches that processes of reacting glyphosate acid with bases such as

ammonia or sodium hydroxide were known, and that due to the exothermic nature of the reaction, excess water content would be driven off as the reaction proceeded. The moisture content as disclosed by Chin et al (10% or less), and even Kramer et al (2%), overlaps applicants' moisture content of 2 to 20%.

No unobvious or unexpected results are noted; no claim is allowed.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to S. Mark Clardy whose telephone number is 571-272-0611. The examiner can normally be reached on 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S. Mark Clardy Primary Examiner

Art Unit 1617